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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/577,032

04/20/2006

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DC5183 PCT 1

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137 7590 03/31/2010  
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EXAMINER

MAZUMDAR, SONYA

ART UNIT

PAPER NUMBER

1791

NOTIFICATION DATE

DELIVERY MODE

03/31/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents.admin@dowcorning.com



## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments, filed January 15, 2010, with respect to the rejections in view of Colas et al. and Johnson et al. have been fully considered but they are not persuasive.

Applicant argues that Colas et al. do not teach applying a silicone gel with a specific primer and that Johnson et al. do not teach or suggest applying a primer to a silicone composition.

Colas et al. teach applying a silicone gel to a carrier sheet (i.e. first substrate), via a casting (i.e. transfer) method, where an additional adhesive or adhesion promoter (i.e. primer) may be used or even included in the gel, to bond the gel and the carrier sheet, and thus, it would have been obvious to one having ordinary skill in the art to either treat the surface of the silicone gel or the carrier sheet (paragraphs 0019, 0025, and 0028); the gel may then be cured following application to the carrier (paragraphs 0030 and 0031). Furthermore, the invention of Johnson et al. is cited to teach treating the surface of a silicone gel with a primer comprising titanate and zirconate materials, when the silicone gel is applied to a polymeric support or tape (i.e. first substrate) (column 5, lines 37-39).

"Where the result accomplished is substantially the same, steps taken concurrently or simultaneously are the equivalent of and not patentable over steps taken successively." (New Wrinkle v. Watson 96 USPQ 436)

Thus, the rejections are maintained in view of Colas et al. and Johnson et al.

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***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 3, 4, 5, 7, 19, 25, 27, and 29 rejected under 35 U.S.C. 103(a) as being obvious over Colas et al. (EP 0955347) in view of Johnson et al. (US 6,475,329)

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Colas et al. teach a method of adhering a silicone gel to a substrate, comprising the steps of (abstract):

forming a layer of a silicone gel on a sheet (paragraphs 0028);  
treating the silicone gel with an adhesion promoter (paragraphs 0025);  
applying the silicone gel to a carrier (paragraph 0028);  
removing the sheet from the silicone gel (paragraph 0028); and  
applying the silicone gel to a substrate to which the silicone gel is adhered to (abstract; paragraph 0015).

Colas et al. teach applying a silicone gel to a carrier sheet (i.e. first substrate), via a casting (i.e. transfer) method, where an additional adhesive or adhesion promoter (i.e. primer) may be used or even included in the gel, to bond the gel and the carrier sheet, and thus, would have been obvious for one having ordinary skill in the art to treat the surface of the silicone gel when applied to a first substrate (paragraphs 0019, 0025, and 0028); the gel may then be cured following application to the carrier (paragraphs 0030 and 0031). "Where the result accomplished is substantially the same, steps taken concurrently or simultaneously are the equivalent of and not patentable over steps taken successively." (New Wrinkle v. Watson 96 USPQ 436)

Also, Colas et al. do not specifically teach treating silicone gel on a sheet with a specific primer. However, it would have been obvious for one having ordinary skill in the art to do so, Johnson et al. is cited to teach treating the surface of a silicone gel with a primer comprising titanate and zirconate materials, when the silicone gel is applied to a polymeric support or tape (i.e. first substrate) (column 5, lines 37-39).

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With respect to claims 3 and 7, Colas et al. teach using a carrier or prosthesis of various types of plastic films, such as polyurethanes or silicones (paragraph 0012).

With respect to claim 4, Colas et al. teach using a prosthesis (i.e. carrier) of various materials, such as breast prosthesis, incontinence devices, pouches, tubes and other devices (Colas: paragraph 0037; Applicant's specification: paragraph 0017).

With respect to claim 5, Colas et al. teach applying a silicon gel layer with a thickness in the range of 0.2 mm to 5 mm (paragraph 0023).

With respect to claim 25, Colas et al. teach applying silicone gel with a tack in the range of 50 and 500 g. (paragraph 0024)

With respect to claims 27 and 29, Colas et al. in view of Johnson et al. teach applying a primer, diluted in alcohol, by brushing and other various methods (Colas: paragraphs 0031 and 0032; Johnson: column 3, line 63 – column 4, line 21; column 5, line 20).

6. Claims 20-24, 26, 28, and 30 rejected under 35 U.S.C. 103(a) as being obvious over Colas et al. in view of Johnson et al.

Colas et al. teach a method of adhering a silicone gel to a substrate, comprising the steps of (abstract):

forming a layer of a silicone gel on a sheet (paragraphs 0028);

applying the silicone gel on the sheet to a carrier (paragraph 0038);

removing the sheet from the silicone gel (paragraph 0028); and

applying the silicone gel to a substrate to which the silicone gel is adhered to (abstract; paragraph 0015).

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Colas et al. teach applying a silicone gel to a carrier sheet (i.e. first substrate), via a casting (i.e. transfer) method, where an additional adhesive or adhesion promoter (i.e. primer) may be used to bond the gel and the carrier sheet, and thus, it would have been obvious for one having ordinary skill in the art to treat the surface of the carrier sheet, before a silicone gel is applied (paragraphs 0019, 0025, and 0028); the gel may then be cured following application to the carrier (paragraphs 0030 and 0031). "Where the result accomplished is substantially the same, steps taken concurrently or simultaneously are the equivalent of and not patentable over steps taken successively." (New Wrinkle v. Watson 96 USPQ 436)

Also, Colas et al. do not specifically teach treating a sheet with a specific primer. However, it would have been obvious for one having ordinary skill in the art to do so, as Johnson et al. teach applying a primer comprising titanate and zirconate materials to silicone gels, as it would be used for improving the adhesion of silicone gels to polymeric adherends (column 1, lines 7-9 and 39-63; column 2, lines 1-26; column 5, lines 17-31).

With respect to claims 21 and 24, Colas et al. teach using a carrier or prosthesis of various types of plastic films, such as polyurethanes or silicones (paragraph 0012).

With respect to claim 22, Colas et al. teach using a prosthesis (i.e. carrier) of various materials, such as breast prosthesis, incontinence devices, pouches, tubes and other devices (Colas: paragraph 0037; Applicant's specification: paragraph 0017).

With respect to claim 23, Colas et al. teach applying a silicon gel layer with a thickness in the range of 0.2 mm to 5 mm (paragraph 0023).

With respect to claim 26, Colas et al. teach applying silicone gel with a tack in the range of 50 and 500 g. (paragraph 0024)

With respect to claims 28 and 30, Colas et al. in view of Johnson et al. teach applying a primer, diluted in alcohol, by brushing and other various methods (Colas: paragraphs 0031 and 0032; Johnson: column 3, line 63 – column 4, line 21; column 5, line 20).

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SONYA MAZUMDAR whose telephone number is (571)272-6019. The examiner can normally be reached on 9:00 AM - 5:30 PM.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Philip Tucker can be reached on (571) 272-1095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SM

/Philip C Tucker/  
Supervisory Patent Examiner, Art Unit 1791